

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED
amendment of ARM 4.12.3009 and)	AMENDMENT
4.12.3402 relating to seed laboratory)	
fees)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. On September 9, 2006, the Montana Department of Agriculture proposes to amend the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on August 24, 2006, to advise us of the nature of the accommodation that you need. Please contact Gregory H. Ames at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-3144; Fax: (406) 444-5409; or e-mail: agr@mt.gov.

3. The rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

4.12.3009 REPORTING AND ASSESSMENT OF SEED SALES

(1) and (2) remain the same.

(3) These reports and the fee of ~~15~~ 20 cents per \$100 in gross sales shall be due not later than July 31 of each year for the preceding 12 month period.

(4) remains the same.

AUTH: 80-5-131, MCA

IMP: 80-5-131, MCA

REASON: Currently, the administrative rules and statute that pertain to this particular rule differ. This is a housekeeping correction to make the fee in rule consistent with the minimum fee in statute, 80-5-131, MCA, of the Montana Seed Act. The minimum fee was increased in 2003, from 15 to 20 cents, as a result of Senate Bill 22, but the Administrative Rules of Montana were never changed accordingly. This change will result in no additional revenue as the department has already begun collecting the additional revenue. However, at the time that the fee was increased, it was projected the department would collect an additional \$4,000 per year. This change affected approximately 48 out of state seed labelers who pay a fee of 20 cents per \$100 dollars of gross sales. The 48 out of state seed labelers are included in the 400 seed customers affected by these proposed rule changes.

4.12.3402 SEED LABORATORY ANALYSIS FEES (1) The Montana seed laboratory, Montana State University, Bozeman, Montana will test samples of seeds submitted for purity, germination, and miscellaneous tests. All samples of seed analyzed and tested shall be at the following rates:

FEE SCHEDULE
(All prices are in U.S. dollars)

<u>KIND OF SEED</u>	<u>PURITY ONLY</u>	<u>GERMINATION ONLY</u>	<u>PURITY & GERMINATION</u>
Bentgrasses, Redtop	\$21.00 <u>44.00</u>	\$17.00 <u>24.00</u>	\$38.00 <u>68.00</u>
Bluegrass, Alkaligrass	21.00 <u>30.00</u>	17.00 <u>24.00</u>	38.00 <u>54.00</u>
Bluestems, Gamma, Galleta, & Indiangrass	44.00 <u>70.00</u>	24.00 <u>25.00</u>	68.00 <u>95.00</u>
Bromegrass, Fescue, Orchardgrass & Ryegrass	21.00 <u>25.00</u>	17.00 <u>18.00</u>	38.00 <u>43.00</u>
Canarygrass	17.00 <u>24.00</u>	14.00 <u>16.00</u>	31.00 <u>40.00</u>
Cereals: i.e., (includes seed count)	12.00 <u>15.00</u>	10.00 <u>12.00</u>	22.00 <u>27.00</u>
barley*, wheat, rye, triticale, corn, oats, spelt, emmer			
Fescues	21.00	17.00	38.00
Flax	12.00 <u>15.00</u>	10.00 <u>12.00</u>	22.00 <u>27.00</u>
Flowers	24.00 <u>25.00</u>	24.00 <u>25.00</u>	48.00 <u>50.00</u>
Foxtails-, creeping* & meadow	44.00 <u>45.00</u>	24.00 <u>25.00</u>	68.00 <u>70.00</u>
Grama, blue & sideoats	45.00	25.00	70.00
Indian ricegrass* (includes dormancy)	18.00 <u>20.00</u>	24.00 <u>42.00</u>	42.00 <u>62.00</u>
Legumes, large & small seeded:	12.00 <u>15.00</u>	10.00 <u>15.00</u>	22.00 <u>30.00</u>
i.e., alfalfa, cicer, milkvetch, clovers, sweetclover, birdsfoot trefoil, beans, peas, lentils, faba, chickpeas, medic, sainfoin			
Legumes, small seeded	15.00	12.00	27.00
Millets	21.00 <u>22.00</u>	17.00 <u>18.00</u>	38.00 <u>40.00</u>
Mustards, Rape	17.00 <u>20.00</u>	14.00 <u>15.00</u>	31.00 <u>35.00</u>
Natives (Indigenous)	24.00 <u>30.00</u>	24.00 <u>25.00</u>	48.00 <u>55.00</u>
Needlegrass* (includes dormancy)	18.00 <u>20.00</u>	24.00 <u>42.00</u>	42.00 <u>62.00</u>
Oats (includes seed count)	16.00	12.00	28.00
Orchardgrass	21.00	17.00	38.00

<u>KIND OF SEED</u>	<u>PURITY ONLY</u>	<u>GERMINATION ONLY</u>	<u>PURITY & GERMINATION</u>
Prairie sandreed	44.00 <u>45.00</u>	24.00 <u>25.00</u>	68.00 <u>70.00</u>
Ryegrass	21.00	17.00	38.00
Safflower & Sunflower	12.00 <u>15.00</u>	10.00 <u>15.00</u>	22.00 <u>30.00</u>
Sage Brush	32.00	25.00	57.00
Saltbushes	\$18.00 <u>20.00</u>	\$24.00 <u>25.00</u>	\$42.00 <u>45.00</u>
Small Seeds (more than 2,500 seeds per gram)	35.00	24.00	59.00
Sorghums- ₁ grain & Sudangrass	12.00 <u>13.00</u>	10.00 <u>15.00</u>	22.00 <u>28.00</u>
Sundangrass	12.00	10.00	22.00
Sugarbeets	12.00 <u>13.00</u>	10.00 <u>15.00</u>	22.00 <u>28.00</u>
Sunflower	12.00	10.00	22.00
Timothy	17.00 <u>18.00</u>	14.00 <u>15.00</u>	31.00 <u>33.00</u>
Tree	24.00 <u>25.00</u>	24.00 <u>25.00</u>	48.00 <u>50.00</u>
Wheatgrasses*	21.00 <u>30.00</u>	17.00 <u>18.00</u>	38.00 <u>48.00</u>
▪ beardless, bluebunch, crested, intermediate, pubescent, slender, streambank, tall, & thickspike			
<u>NewHY</u>	<u>30.00/hr</u>	<u>20.00</u>	<u>30.00/hr plus 20.00</u>
▪ western	24.00 <u>35.00</u>	24.00 <u>25.00</u>	48.00 <u>60.00</u>
<u>White Wheat (includes potassium hydroxide test & seed count)</u>	<u>23.00</u>	<u>12.00</u>	<u>25.00</u>
Wildryes	21.00 <u>30.00</u>	17.00 <u>20.00</u>	38.00 <u>50.00</u>
Wild Flowers	24.00 <u>25.00</u>	24.00 <u>25.00</u>	48.00 <u>50.00</u>
Vegetables	12.00 <u>15.00</u>	10.00 <u>12.00</u>	22.00 <u>27.00</u>

MIXTURES:

(See hourly rate)

Tetrazolium Test (TZ): ~~each kind of seed listed above: \$30.00~~ 35.00 except for labor intensive species - \$45.00

*~~May contain~~ Laboratory analysis may report that the sample contains dormant seed.

(2) Fees for additional services provided by the seed laboratory:

Hourly rate \$30.00 (for services including testing mixtures, excessively ~~dirty~~ high inert (>5 percent) or time consuming samples)

Rush ~~\$30.00~~ 60.00 (expedite sample before routine

	samples)
Express-rush	\$120.00 (expedite sample before all rush samples)
BSMV	\$36.00 <u>45.00</u> (Barley Stripe Mosaic Virus Test)
Seed ID	\$6.00 <u>10.00</u> (per seed identification)
Dormancy	\$18.00 (in addition to germination charges)
Utricle Fill	\$18.00 <u>20.00</u> (in addition to germination charges)
FAX	\$3.00 (to send analysis reports)
Phone	\$3.00 (to send analysis reports)
USA Noxious	\$6.00 <u>7.00</u> (in addition to normal rate)
Canadian Rules	\$6.00 <u>30.00/hr</u> (samples tested in accordance with Canadian rules)
ISTA Rules	\$6.00 <u>30.00/hr</u> (samples tested in accordance with ISTA rules)
Ascochyta test	\$36.00 <u>45.00</u>
Sodium <u>Potassium</u>	
Hydroxide	\$6.00 <u>7.00</u>
<u>MSGA – Cereals</u>	<u>\$7.00</u>
<u>Herbicide bioassay</u>	<u>\$25.00</u>
<u>Clearfield confirm</u>	<u>\$50.00</u>
<u>Moisture</u>	<u>\$10.00</u>
<u>Seed count</u>	<u>\$2.00</u>
<u>ELIZA (per 3 strips)</u>	<u>\$25.00</u>
<u>Credit card payment</u>	<u>5 percent handling fee</u>
<u>Grass envelopes</u>	<u>\$0.50</u>
<u>Cereal envelopes</u>	<u>\$0.60</u>
<u>Return sample</u>	<u>\$3.00 - 5.00</u>

AUTH: 80-5-139, MCA

IMP: 80-5-126, 80-5-128, MCA

REASON: The Montana State Seed Laboratory has experienced negative cash flow for the past three years. The laboratory is funded via fee for service testing, and does not receive general fund monies. Thus, the net negative cash flow is accumulating. The fee increase will result in a positive cash flow in fiscal year 2007 and a positive cash balance in fiscal year 2008. Maintenance on equipment is currently being deferred as much as possible without affecting the lab functions. There have been no capital improvements in the past three years and there will not be any capital improvements until such time as the budget appears to have offset the negative balance. Former laboratory personnel were being trained and then hired away from the lab because of higher wages elsewhere. Wages have increased via a program linked to certification of personnel and because of legislatively mandated wage increases. Staffing levels have been reduced in an attempt to balance the budget. Samples may accumulate because of low staffing levels. Laboratories across the region are increasing testing prices or in some cases have raised prices twice in the past three years to reflect costs. The requested price increases average 16 percent, which is less than 3 percent per year since the last

set of price increases. The proposed price increase also allows for a computer program that will allow customers to see their results in a web-based environment.

The impact on the average customer is projected to be \$50.94 annually. The cumulative economic impact of the proposed increase is \$20,376.00 (\$50.94/customer x 400 customers). The largest price increases will fall primarily on customers submitting native grass and forb species for laboratory analysis. Staffing will be added when justified by the budget, which will increase rapidity of sample analysis. The impact of the new seed lab analysis computer program will provide an off-set in costs because of the web-based availability of the customer to see data and ability to electronically mail results to customers. This program will be of special interest to the Montana Seed Grower Association and Montana Foundation Seeds because of the ability to rapidly track lots of seed. Time spent on the telephone for both the customer and the seed lab should be reduced according to experience from other labs utilizing this computer program.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Gregory H. Ames at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov. Any comments must be received no later than September 7, 2006.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Gregory H. Ames at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov. A written request for hearing must be received no later than September 7, 2006.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 40 persons based on the approximately 400 seed laboratory customers who are farmers, seed companies, and state and federal agencies that submit samples to the laboratory.

7. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to Montana Department of Agriculture, 303 North Roberts, P.O. Box

200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

8. An electronic copy of this Notice of Proposed Amendment is available through the department's web site at www.agr.mt.gov, under the Administrative Rules section. The department strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

DEPARTMENT OF AGRICULTURE

/s/ Nancy K. Peterson
Nancy K. Peterson, Director

/s/ Timothy J. Meloy
Timothy J. Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State, July 31, 2006.